

1 Matthew Strugar (State Bar No. 232951)
2 matthew@matthewstrugar.com
3 Law Office of Matthew Strugar
4 3435 Wilshire Blvd., Suite 2910
5 Los Angeles, CA 90010
6 323-696-2299

7 Attorney for Plaintiff

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION

10 GRAYSON FLORY,

11 Plaintiff,

12 v.

13 THE UNITED STATES DEPARTMENT OF
14 HOMELAND SECURITY,

15 Defendant.

Civ. No. 19-cv-9735

**Complaint for Declaratory and
Injunctive Relief**

16
17
18
19
20 1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C.
21 § 552, seeking the release of records related to the human rights organization
22 No More Deaths.

23 **Jurisdiction and Venue**

24 2. This Court has jurisdiction over the parties and subject matter pursuant
25 to 5 U.S.C. § 552(a)(4)(B).

26 3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).
27
28

Parties

4. Plaintiff Grayson Flory is a resident of Manhattan Beach, California. He is a freelance writer for the environmental and human rights publication Earth First! Journal. Flory seeks access to certain public records to write news reports for distribution to the general public through the Earth First! Journal print publication and through the Journal's website.

5. Defendant Department of Homeland Security (DHS) is an agency of the United States.

6. United States Customs and Border Protection (CBP) is a component of DHS. CBP has possession, custody and control of the records Flory seeks.

Statement of Facts

7. On April 22, 2019, Plaintiff submitted a FOIA request to CBP via the federal government's FOIA Online portal (<http://foiaonline.gov/>) seeking copies of records related to No More Deaths, also known as No Más Muertes, between November 2016 and January 2019.

8. A true and correct copy of Plaintiff's FOIA request is attached as Exhibit A.

9. The request specified that it sought "copies of emails and any other correspondence and records of correspondence between Customs and Border Protection and/or Department of Homeland Security and other state, federal, and local agencies, including but not limited to the Bureau of Land Management (BLM), the United States Attorney's Office for the District of Arizona, the Department of Defense (DOD), the Federal Bureau of Investigation (FBI), the US Fish and Wildlife Service (FWS), the Santa Cruz County Sheriff's Office, and the Pima County Sheriff's Department" related to No More Deaths.

10. The request also sought copies of the following documents related to No More Deaths: "Requests for authority to make confidential

1 expenditures; Reports of informants, anonymous informants, non-confidential
 2 informants, confidential informants, and/or controlled informants; Requests
 3 for mail covers, with records of the action ordered thereon and all reports
 4 issued pursuant thereto; Requests for extension of mail covers, with records of
 5 the action ordered; Photostatic copies of the faces of envelopes or other
 6 photographs of mail matter; Requests for ‘criminal record’ from any federal,
 7 state, and/or local law enforcement agency; Incident reports; Incident
 8 summaries; Electronic Communications; Requests for surveillance;
 9 Surveillance logs; Photographs taken during the course of any physical
 10 surveillance; Requests for electronic surveillance; Electronic surveillance logs;
 11 Electronic surveillance transcripts; [and] Summaries of electronic
 12 surveillance.”

13 11. The request went on to state that “[i]n past communications
 14 referencing No More Deaths, law enforcement agencies have used the
 15 following terms to describe the group, its volunteers, and its activities, and
 16 these terms may aid in your search: ‘No More Deaths,’ ‘No Más Muertes,’
 17 ‘NMD,’ ‘Samaritans,’ ‘Byrd Camp,’ ‘the Barn,’ ‘stash house,’ ‘No More Deaths
 18 camp,’ ‘humanitarian aid,’ ‘humanitarian aid workers,’ ‘Unitarian Universalist
 19 Church of Tucson,’ ‘UUCT,’ ‘desert aid,’ ‘Desert Aid Working Group,’ [and]
 20 ‘DAWG.’”

21 12. The agency assigned Flory’s request Tracking number CBP-2019-
 22 046352.

23 13. On May 20, 2019, the agency issued Flory a letter stating that his
 24 FOIA request was closed as insufficient for one of five reasons:

- 25 • His FOIA request is a third-party request and did not include
- 26 authorization that information on this individual, or business, can be
- 27 released to him;
- 28 • His FOIA request did not include a date of birth;

- 1 • His FOIA request did not include a full name (and aliases as
- 2 appropriate) of the individual in which he is seeking records;
- 3 • His FOIA request did not include a death certificate;
- 4 • His FOIA request not include a clear and detailed description of the
- 5 records being requested. Please be advised that the FOIA does not
- 6 require federal agencies to answer inquiries or create records in
- 7 response to a FOIA request, but rather is limited to requiring agencies
- 8 to provide access to reasonably described, nonexempt records. As you
- 9 have failed to reasonably describe the records you are seeking, your
- 10 request is not a perfected request, and we are unable to initiate a
- 11 search for responsive records.

12 14. A true and correct copy of the agency's May 20, 2019 letter is
13 attached as Exhibit B.

14 15. Flory attempted to file an administrative appeal of the closing of
15 his request. By letter of June 17, 2019, Flory explained that his request did not
16 seek information on a business and was not about an individual so it did not
17 need a date of birth, an address, or a death certificate. He also noted that the
18 request provided a detailed description of the records that he sought, reiterated
19 that description, and noted that he has made similar requests to other federal
20 agencies and received the documents he sought in those requests.

21 16. On July 2, 2019, CPB's FOIA division sent Flory an email stating
22 the agency was working on Flory's request and the request was "pending
23 search results for emails." This email came despite the agency's May 20, 2019,
24 letter stating Flory's request was closed and made no reference to Flory's
25 administrative appeal of July 17, 2019.

26 17. On August 18, 2019, Flory emailed the Office of Government
27 Information Services (OGIS) seeking assistance related to his administrative
28

1 appeal. He noted that he has not received and acknowledgment of his appeal,
2 an appeal number, or an estimated completion date.

3 18. On August 30, 2019, OGIS responded to Flory stating that they
4 would look into the issue and assigned Flory's request Case No. 19-02835.

5 19. On October 10, 2019, OGIS wrote Flory stating "We contacted
6 CBP to request that CBP provide us with the status and estimated date of
7 completion for your request and appeal. Unfortunately, CBP was unable to
8 provide us with an estimated date of completion for the processing of your
9 request and appeal."

10 20. As of the filing of this Complaint, Flory has not received any
11 acknowledgement of or response to his June 17, 2019 administrative appeal.

12 21. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Flory is deemed to have
13 exhausted his administrative remedies.

14 **Count I: Violation of FOIA**

15 22. Flory realleges and incorporates by reference the allegations in
16 each of the preceding paragraphs of this Complaint.

17 23. Defendant has violated FOIA by failing to produce the records
18 responsive to Flory's April 22, 2019 request.

19 24. Flory and the public have been and will continue to be irreparably
20 harmed until Defendant is ordered to comply with Plaintiff's FOIA request.

21 **Request for Relief**

22 WHEREFORE, Plaintiff respectfully requests that this Court:

23 (1) Declare Defendant's failure to comply with FOIA to be unlawful;

24 (2) Enjoin Defendant from continuing to withhold the public records
25 responsive to Flory's FOIA request and otherwise order Defendant to produce
26 the requested public records without further delay;

27 (3) Grant Flory an award of attorney fees and other litigation costs
28 reasonably incurred in this action, to the extent permitted by law; and

1 (4) Grant Flory such other and further relief which the Court deems proper.

2 Date: November 13, 2019

3 Respectfully submitted,

4 /s/ Matthew Strugar

5 Matthew Strugar (State Bar No. 232951)

6 matthew@matthewstrugar.com

7 Law Office of Matthew Strugar

8 3435 Wilshire Blvd., Suite 2910

9 Los Angeles, CA 90010

10 323-696-2299